FEDERAL COURT OF AUSTRALIA

National Tertiary Education Union v La Trobe University [2014] FCA 1330

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| Citation: | National Tertiary Education Union v La Trobe University [2014] FCA 1330 |
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| Parties: | **NATIONAL TERTIARY EDUCATION UNION v LA TROBE UNIVERSITY** |
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| File number: | VID 695 of 2014 |
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| Judge: | **TRACEY J** |
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| Date of judgment: | 8 December 2014 |
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| Catchwords: | **INDUSTRIAL LAW** – Enterprise agreement – construction of redundancy clause in La Trobe University Collective Agreement 2014 – whether University contravened redundancy clause – discussion of principles relating to the construction of enterprise agreements |
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| Legislation: | *Fair Work Act 2009* (Cth) ss 50, 217*Federal Court Rules 2011* (Cth) rr 30.01, 30.02  |
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| Cases cited: | *Amcor Limited v Construction, Forestry, Mining and Energy Union* (2005) 222 CLR 241 – cited *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Qantas Airways Limited* (2001) 106 IR 30 – cited *City of Wanneroo v Holmes* (1989) 30 IR 362 – cited *Kucks v CSR Limited* (1996) 66 IR 182 – cited *La Trobe University* [2014] FWCA 4222 – cited *National Tertiary Education Industry Union v La Trobe University* [2014] FWC 5806 – cited *National Tertiary Education Union v Royal Melbourne Institute of Technology* (2013) 234 IR 139 – considered *National Tertiary Education Industry Union v Victoria University* [2014] FWC 7711 – considered *Reeves v MaxiTRANS Australia Pty Ltd* (2009) 188 IR 297 – cited  |
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| Date of hearing: | 3 December 2014 |
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| Place: | Melbourne |
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| Division: | FAIR WORK DIVISION |
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| Category: | Catchwords |
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| Number of paragraphs: | 49 |
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| Counsel for the Applicant: | Ms S Keating |
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| Solicitor for the Applicant: | National Tertiary Education Union |
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| Counsel for the Respondent: | Mr C O’Grady |
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| Solicitor for the Respondent: | Clayton Utz |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
| FAIR WORK DIVISION | VID 695 OF 2014 |

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| BETWEEN: | NATIONAL TERTIARY EDUCATION UNIONApplicant |
| AND: | LA TROBE UNIVERSITYRespondent |

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| JUDGE: | TRACEY J |
| DATE OF ORDER: | 8 DECEMBER 2014 |
| WHERE MADE: | MELBOURNE |

THE COURT ORDERS THAT:

1. The further hearing of the proceeding be adjourned to 9:30 am on 11 December 2014.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
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| JUDGE: | TRACEY J |
| DATE: | 8 DECEMBER 2014 |
| PLACE: | MELBOURNE |

**REASONS FOR JUDGMENT**

1. Like many tertiary education institutions La Trobe University (“the University”) has, in recent years, experienced financial stress. In 2012 the University adopted a five year strategic plan which was entitled “Future Ready: Strategic Plan 2013-2017” (“the Strategic Plan”). The Strategic Plan identified a number of weaknesses in areas such as research performance, course offerings, staff productivity and funding and investment. Remedial action was proposed with a view to ensuring that the University was successful and sustainable. Part of this remedial action involved a restructuring under which the University moved from a five faculty to a two college model. The financial implications of implementing the Strategic Plan were analysed by a committee which found that, if the changes were to be implemented, costs savings of $65 million would be needed. Faculties were asked to develop business cases relating to the restructure. It was common ground that one of the effects of the restructure would be a reduction in the number of positions and job losses.
2. The National Tertiary Education Union (“the NTEU”) was concerned that these processes had not been determined and implemented consistently with the terms of the La Trobe University Collective Agreement 2009 (“the 2009 Agreement”). It activated the dispute resolution procedures under the 2009 Agreement in March 2014. On 23 April 2014 the NTEU notified the Fair Work Commission (“the Commission”) of a dispute with the University and sought a private arbitration. Having conducted a series of hearings Deputy President Smith handed down his decision on 9 September 2014: see [2014] FWC 5806. The NTEU was dissatisfied with aspects of the decision and the University’s response to it.
3. Coincidentally the University and the NTEU were negotiating a new agreement to supersede the 2009 Agreement. On 26 June 2014 Deputy President Smith approved a new La Trobe University Collective Agreement 2014 (“the 2014 Agreement”) which was to operate from 3 July 2014: see [2014] FWCA 4222.
4. On 19 November 2014 the NTEU filed an originating application in this Court in which it sought a declaration that “by terminating, or proposing to terminate, the employment of employees by way of compulsory redundancy, other than as a last resort, the [University] contravened section 50 of the [*Fair Work Act 2009* (Cth)]”. It sought the imposition of a pecuniary penalty on the University for “each contravention” of s 50 and a permanent injunction to restrain the University from terminating the employment of any employee “by reason of compulsory redundancy pursuant to the [Strategic Plan], other than in accordance with section (sic) 74” of the 2014 Agreement.
5. The NTEU also sought interlocutory orders that the originating application be heard and determined before 17 December 2014.
6. A statement of claim was filed with the originating application. In the statement of claim the NTEU alleged that, on or about 9 October 2014, the University had announced that it was proceeding to implement the proposed restructure. A consequence was that some 280 employees were to have their employment terminated by reason of redundancy. Of those 280, 180 had expressed interest in leaving the University and 100 were to have their employment terminated “by means of compulsory redundancy.”
7. The statement of claim alleged that the University, in dealing with professional staff whose positions were redundant, had not implemented a general voluntary redundancy programme, had not permitted these employees to express an interest in accepting a voluntary redundancy package and had refused to accept expressions of interest from employees seeking, voluntarily, to terminate their employment.
8. The NTEU further alleged that, in dealing with the academic staff whose positions had become redundant, the University had not offered a general voluntary redundancy programme, had directly selected a number of employees for what was described as “compulsory redundancy” without first considering voluntary redundancies and/or permitting the selected employees to apply for positions in the new structure; and had implemented what was described as a “spill and fill” process. That ‘spill and fill’ process was explained in paragraph 22 of the statement of claim. The University was said to have:

“(a) directly appointed some employees to positions in the new structure;

(b) called for expressions of interest in early departure from, and only from, the pool of employees not directly appointed to a position in the new structure and whose substantive position is affected by the Implementation (sic); and

(c) implemented a competitive selection process for employees not directly appointed to a position in the new structure, including employees who have expressed interest in leaving the employ of [the University]; and

(d) refused to accept expressions of interest from some of the pool of employees who have expressed interest in voluntarily leaving the employ of [the University].”

1. The NTEU pleaded that, in acting in this way in respect of both professional and academic staff, the University had:

“(a) used, is using, or intends to use, compulsory redundancies other than as a last resort;

(b) failed to ensure that redundancies were avoided wherever possible; and

(c) failed to make reasonable attempts to mitigate against compulsory redundancies and to avoid job losses.”

1. In doing so, the NTEU asserted, the University had “contravened, and continues to contravene, section 50 of the [Fair Work] Act.”
2. Section 50 of the Act provides that “[a] person must not contravene a term of an enterprise agreement.”
3. Because of the apparent urgency of the matter it was called on for mention on 21 November 2014.
4. In the course of the mention the NTEU elaborated on its pleadings, explaining that the contravention with which it was concerned was a contravention of Clause 74 of the 2014 Agreement. That Clause read:

“The University is committed to job security. Wherever possible redundancies are to be avoided and compulsory retrenchment used as a last resort. The University reserves the right to use the agreed redundancy procedures and provisions set out in this Agreement when all reasonable attempts to mitigate against such action and to avoid job loss have been unsuccessful.”

1. A provision in the same terms had appeared as Clause 69 in the 2009 Agreement.
2. In the course of the preliminary hearing it became clear that there was significant disagreement between the parties as to the nature and volume of evidence which would need to be called at trial. In part, this disagreement related to differences between them as to the construction and application of Clause 74.
3. In broad terms, the NTEU considered that it could make good its case by presenting evidence about the processes which the University had put in place to deal with redundancies while the University contended that it would be necessary to examine separately its treatment or proposed treatment of each of the employees whose positons had become redundant.
4. It was agreed that it would assist the conduct of the proceeding if the Court were to determine, as a preliminary question, whether, on its true construction, Clause 74 imposed any and, if so, what binding obligations on the University. Directions were given pursuant to which written submissions and some limited evidence were filed in advance of a hearing to deal with this issue which took place on 3 December 2014: see *Federal Court Rules 2011* (Cth), Rule 30.01.

# CONSTRUCTION OF CLAUSE 74

1. The University’s principal contention was that Clause 74 imposed no binding obligations on it. The Clause amounted to no more than a series of “aspirational” or “hortatory” statements: cf *Reeves v MaxiTRANS Australia Pty Ltd* (2009) 188 IR 297 at 303-4 (Ryan J). In the alternative the University submitted that any obligation arising under the Clause was to be found in the third sentence. It required that the University could not have resort to the agreed redundancy procedures in the 2014 Agreement until it had made all reasonable attempts to mitigate against such resort and to avoid job losses. On either view, the University contended, Clause 74 did not require the University to implement a voluntary redundancy scheme, offer voluntary redundancies to particular employees or to dictate the basis on which staff might be selected for termination of employment on redundancy grounds.
2. The NTEU accepted that the first sentence of the Clause could be characterised as aspirational but maintained that both the second and third sentences, when read together, imposed obligations on the University. Those obligations were “wherever possible” to avoid redundancies and to use compulsory retrenchment only as a last resort. The NTEU tacitly accepted that the third sentence did not, standing alone, impose any obligation on the University. The sentence did, however, so it was contended, emphasise the mandatory nature of the second sentence by making it plain that the University may not exercise its reserved right unless and until the asserted obligations which are prescribed by the second sentence had been satisfied.
3. The canons of construction which are applied to industrial awards and agreements are well known and were accepted by the parties in the present proceeding. The starting point is necessarily the text of the provision. It will not be read pedantically and due allowance will be made for the likelihood that the authors are industrial relations practitioners without legal training who have been striving to find a practical solution to disputed issues. Due allowance will also be made for the fact that the parties may choose to use terminology which has a well understood meaning in the industrial relations arena but might otherwise be regarded as lacking precision: see *Kucks v CSR Limited* (1996) 66 IR 182 at 184 (Madgwick J) which was quoted with approval by two members of the High Court in *Amcor Limited v Construction, Forestry, Mining and Energy Union* (2005) 222 CLR 241 at 271 (Kirby J), 282-3 (Callinan J). The provision falls to be construed in the context of the agreement as a whole or other relevant provisions of it and having regard to the legislative background against which the agreement was made and in which it operates: *Amcor* at 253 (Gummow, Hayne and Heydon JJ).
4. Such an approach to the construction of industrial instruments, while benign, does not mean that drafting which lacks reasonable clarity will effectively be rewritten and applied by the Court. It is to be borne in mind that contraventions of awards and agreements, made under the *Fair Work Act*, give rise to civil penalties. For this reason they “should make sense according to the basic conventions of the English language”: *City of Wanneroo v Holmes* (1989) 30 IR 362 at 380 (French J). Were it otherwise a party could be put in jeopardy of a substantial monetary penalty for failing to comply with an uncertain stipulation which it could not reasonably be expected to comprehend.
5. Clause 74 is to be read and construed in the context of the agreement as a whole and, in particular, Clause 76. This is because the reference, in the third sentence of Clause 74, to “the agreed redundancy procedures and provisions set out in this Agreement” picks up Clause 76 which is headed “REDUNDANCY PROCEDURES”. That Clause applies to all academic and professional employees covered by the agreement (Clause 76.1(a)). Clause 76.2 provides that:

“The University will actively seek to redeploy any employee who may be notified of *potential redundancy* to a suitable vacant position.” (Emphasis added).

1. Clause 76.3 follows immediately and provides that:

“Where the University has *decided to terminate* the employment of one or more employee(s) for reasons of an economic, technological, structural or similar nature … the University will formally notify the affected employee(s), and their Representatives, in writing that their employment will terminate, the reason(s) for the termination, and the proposed date of cessation of employment.” (Emphasis added).

1. Once notice is given certain further procedures are triggered. An eight week redeployment period commences to run: see Clause 76.5. Within 10 working days the employee is required to advise in writing whether he or she wishes to apply for “early separation” or seek redeployment within the University: see Clause 76.6. If the employee expresses a preference for redeployment the University is required, by Clause 76.7, to seek to find an alternative position for the employee. Various provisions then follow to deal with the benefits which are to flow to the employee upon early separation, termination at the end of the redeployment period or on the employee rejecting a reasonable offer of redeployment.
2. By Clause 76.19 – 76.26 provision is made for review of “the *decision to terminate*” the employment of a particular employee. The Clause is said to apply “to an employee who is *formally notified of redundancy* after the commencement of this Agreement.” (Emphasis added): see Clause 76.26.
3. There was some debate, during oral argument, about whether Clause 76 applied only to what were referred to as “compulsory redundancies” or whether it also applied to “voluntary redundancies”. The NTEU argued for the former construction; the University the latter. The differences between the parties on this point are, to a large extent, attributable to the imprecise and confusing use of language in both Clauses 74 and 76.
4. The word “redundancy … is not a concept of clearly defined and inflexible meaning”: *Amcor* at 249 (Gleeson CJ and McHugh J). Nonetheless, it is clear enough, in an industrial context that “the emphasis [is] upon a ‘job’ becoming redundant rather than a worker becoming redundant”: *Amcor* at 259 (Gummow, Hayne and Heydon JJ). If a workers’ job becomes redundant the consequence may be that the worker will be “retrenched” in the sense that his or her contract of service will be terminated.
5. Notwithstanding this orthodoxy it is not uncommon, in industrial parlance, to encounter references to “voluntary redundancy” and “compulsory redundancy” where what is being referred to is termination of employment *following* a redundancy; the employee may agree with the employer to bring his or her contract of employment to end or the employer might choose, unilaterally, to terminate the contract on the ground that it no longer wishes the work, formerly done by the employee, to be done by anyone.
6. Such imprecision of language is reflected in the terms of the Agreement. The words “redundancies” and “compulsory retrenchment” in the second sentence of Clause 74 are used in a conventional manner. The third sentence, however, gives rise to difficulty. The University reserves it right “to use the agreed redundancy procedures … when all reasonable attempts to mitigate against *such action* and to avoid job loss have been unsuccessful.” (Emphasis added). Plainly enough the redundancy procedures are those prescribed by Clause 76. What is less clear is what is comprehended by the words “such action”. One possibility is that they refer to the avoidance of redundancy and resort to compulsory retrenchment – matters mentioned in the second sentence. Alternatively, the action referred to might be the use of the procedures contained in Clause 76. Either way confusion arises. Given that compulsory retrenchment is effectively rendered the last resort by the provisions of Clause 76 the first possibility would effectively require the University to do some or all of the things prescribed by Clause 76 before invoking it. The alternative construction also gives rise to difficulty: while it makes sense to qualify the University’s right to invoke Clause 76 until all reasonable attempts to avoid the need to do so have been taken, it is less clear how reasonable attempts to avoid job loss can be a necessary precursor to resort to Clause 76 when Clause 76 itself provides for processes such as redeployment and retraining in order to avoid job losses.
7. The problems are compounded within Clause 76. The word “redundancy” in Clause 76.2 is used synonymously with “terminate” in Clause 76.3. Similarly, “redundancy” apparently bears the same meaning in Clauses 76.5 and 76.26 as does “terminate” in Clause 76.14(b). Moreover, the reference, in Clause 76.7, to an “employee who may be facing potential redundancy” appears, in context, to be a reference to an employee who has been given a notice of termination pursuant to Clause 76.3. It would appear that, for the most part, the word “redundancy” is used, in Clause 76, to mean “termination” of employment. This, however, is not a consistent usage. The references in Clauses 76.4(b) and 76.13, for example, to “redundancy benefits” refer to benefits paid upon termination (either agreed or enforced) as a consequence of the employee’s position being rendered redundant. This inapt use of language gives rise to confusion as evidenced by the debate between the parties as to whether or not Clause 76 regulates only “compulsory redundancy”.
8. The NTEU placed particular reliance on two decisions which had dealt with clauses, similar to Clause 74, in other agreements to which tertiary institutions were party.
9. The first of these cases was *National Tertiary Education Union v Royal Melbourne Institute of Technology* (2013) 234 IR 139. In that case Gray J was called on to construe Clause 19 of an enterprise agreement which bound the parties. Clause 19 provided that:

“RMIT acknowledges that security of employment is an important issue for its employees. RMIT is committed to exploring all reasonable measures to avoid forced redundancies. Where possible, it will pursue the options of retraining, national attrition, voluntary separations, fixed term retirement contracts, leave without pay, voluntary conversion to part-time employment, long service leave, or internal transfer before proceeding with forced redundancies. The University will ensure that employees and the NTEU are consulted and provided adequate notice according to the Introduction of Major Change and Redundancy and Redeployment clauses.”

1. The NTEU had argued that the RMIT had contravened Clause 19 by failing to explore all reasonable measures to avoid a particular forced redundancy. His Honour rejected this submission. He said (at 182-3) that:

“It is difficult to construe cl 19 as imposing on RMIT an obligation to explore all reasonable measures to avoid forced redundancies. The clause contains a recital of RMIT’s commitment to do so, rather than an expression of a rule that it must do so. It may be that the expression of a commitment was seen as an important element in negotiations leading to the Enterprise Agreement, but that the choice was made not to impose a general obligation. The specific options that RMIT is obliged to pursue before proceeding with forced redundancies are preceded by the words ‘Where possible’. In the present case, there was no focus on any specific option as being both possible and not pursued. For these reasons, the argument that there was a contravention of cl 19 of the Enterprise Agreement cannot be accepted.”

1. The NTEU directed particular attention to Gray J’s reference to the use of the words “where possible” in conjunction with an obligation to pursue specific options prior to the imposition of forced redundancies. It argued that the words “where possible” formed part of a binding obligation and that this led, inexorably, to the conclusion that the second sentence in Clause 74 also imposed obligations: it was prefaced with the words “*wherever* possible” which, it was said, were words of “higher obligation” than “*where* possible” and supported the view that what followed placed binding constraints on the University.
2. There are material differences between Clauses 19 and 74. Immediately after the words “where possible” in Clause 19 it is stipulated that the RMIT (“it”) *will* pursue certain options before it proceeds to enforce redundancies. By way of contrast the second sentence in Clause 74 does not refer specifically to the University. Nor does it stipulate any options which the University is to explore in order that redundancies might be avoided. It is notable that the words “wherever possible” are not used in conjunction with the word “will”.
3. The second decision to which the NTEU referred was that of Commissioner Bissetin *National Tertiary Education Industry Union v Victoria University* [2014] FWC 7711. The Commissioner there considered the construction of Clause 65 of another enterprise agreement. It provided that:

“65.1 The University recognises that security of employment is an important issue for its staff members. The goal of the University is to endeavour that there be no net reduction in jobs.

65.2 The University will pursue the options of retraining, natural attrition, voluntary separations, fixed term retirement contracts, leave without pay, voluntary conversion to part-time employment, long serve leave, or internal transfer before proceeding with forced redundancies.

65.3 The University will seek wherever possible to avoid forced redundancies, but reserves the right to adopt this approach. Forced redundancies will be considered only as a last resort when all other options have been exhausted.”

1. Commissioner Bisset found (at [72]) that Clause 65.1 was “aspirational in nature”. As to the remainder of the Clause she said (at [73]) that:

“Clause 65.2 however places a positive obligation on the University (the University *will* pursue options … *before* forced redundancies) and clause 65.3 gives the University the right to consider forced redundancies if all other options have been exhausted.” (Emphasis in original).

1. Later in her reasons the Commissioner observed (at [76]) that:

“As I have found, it seems to me that Clause 65, whilst placing an obligation on the University, is silent on how that obligation is to be achieved – on a University wide basis or within an identified part of the University – and for how long such options must be pursued before they can be said to be exhausted.”

1. Again, there are material differences between Clauses 65 and 74. Unlike Clause 74, Clause 65.2 identifies the University and says that it “*will*” pursue various identifiable options before proceeding to enforce redundancies.
2. I do not, therefore, consider that these authorities support the construction contended for by the NTEU.
3. The NTEU also sought to support its construction of Clause 74 by contending that an examination of the agreement as a whole disclosed that all the aspirational statements were concentrated in Part A and that Part G, in which Clause 74 appears, contained only prescriptive provisions.
4. This contention fails on close analysis. While Part A of the Agreement contains many aspirational statements it also, as the NTEU conceded, contains provisions which impose obligations. Part G, on the other hand, is mainly, but not exclusively, prescriptive. By Clause 72.1, for example, “staff are *encouraged* to resolve work-related problems or issues through informal means and at the local work area” prior to invoking the formal grievance procedure provided for later in that Clause. Similarly, Clause 72.2 provides that, if a grievance is raised by a group of staff members, any grievance lodged by the group “will normally include the names of all parties to the grievance, to enable the University to manage the grievance and respond effectively to individuals involved.” Aspirational statements are also to be found in other parts of the Agreement. Clause 52.3, for example, which appears in Part E, acknowledges that academic work embraces research, teaching, leadership and professional and community service and goes on to state that “[a]ll academic staff members at the University should have adequate and appropriate opportunities to perform in all these areas.”
5. The NTEU also placed some reliance on an earlier version of Clause 74. Clause 14.3 appeared in the La Trobe University Enterprise Bargaining Agreement 2001. It provided that:

“Wherever possible redundancies are to be avoided and compulsory retrenchment used as a last resort. The University reserves the right to use the agreed redundancy procedures and provisions set out in this Agreement when all attempts to mitigate against such action, to avoid job loss has been unsuccessful. This sub-Clause shall cease to have effect upon the nominal expiry date of this Agreement.”

1. The NTEU argued that the final sentence would not have been necessary had the earlier provisions not had coercive effect. It may reasonably be assumed that this “sunset” provision was intended to have some effect on the relative positions of the parties if a new agreement had not been negotiated before the nominal expiry date of the 2001 Agreement. There was, however, no evidence about the reason or reasons the parties agreed to incorporate the final sentence in Clause 14.3 or of any mutual understanding of its meaning and effect. In these circumstances it is not possible to conclude that its purpose and effect was to relieve the University of any obligation.
2. Despite having made due allowance for the factors which require a benign construction of industrial instruments, I am not persuaded that the second and third sentences of Clause 74 of the Agreement, either separately or collectively, impose obligations on the University. As already noted, the second sentence does not, expressly, refer to the University. Nor does it contain any words of obligations such as “will” or “shall” which are employed elsewhere in the Agreement to impose obligations on the University: see, for example, Clauses 63.11(c), 67, 72.18, 73.2, 73.4 and 73.5. The second sentence of Clause 74 does no more than provide aspirational particulars of the aspirational commitment made in the first sentence.
3. This conclusion is not changed by a reading of the second and third sentences in conjunction. The third sentence records a reservation by the University of its right to resort to Clause 76. The need for such a reservation is unclear given that the University was entitled to use Clause 76 even had such reservation not been made. The apparent intention of the reservation was to provide some general comfort to employees, in the event of redundancies occurring, by recording the University’s policy that compulsory termination of service would only occur after other less drastic measures had been explored. For reasons which I have already explained (see above at [29]), the terms in which the reservation is expressed are ambiguous. Moreover, the words lack precision and practical effect. They do not, for example, stipulate for how long the University will pursue alternative options (some of which are already provided for in Clause 76) before invoking Clause 76.

# DISPOSITION

1. It will be clear from the foregoing analysis that the provisions on which the NTEU seeks to rely are both ambiguous and confusing.
2. The NTEU has not chosen to seek a variation of the Agreement to clarify the uncertainty which must have become apparent in the course of argument during the private arbitration conducted before Deputy President Smith. This it could have done under s 217(1) of the Act. It has opted instead to allege a contravention of the Agreement and to seek a pecuniary penalty under the Act. In such a proceeding the NTEU bears the onus of establishing that the construction of Clause 74, for which it contends, is the correct one. It has failed to satisfy this onus.
3. In such circumstances the appropriate order would seem to be that the application be dismissed: cf *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Qantas Airways Limited* (2001) 106 IR 307 at 325-6 (North J); and see Rule 30.02. A declaration might also be appropriate. I will hear the parties on the terms of any orders which should be made once they have had the opportunity of considering these reasons.

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| I certify that the preceding forty-nine (49) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey. |

Associate:

Dated: 8 December 2014